

INFORMAL DISCUSSION PAPER
ON POSSIBLE WAYS TO IMPROVE THE DRAFTING PROCESS FOR
EXECUTIVE COMMITTEE CONCLUSIONS ON INTERNATIONAL PROTECTION

I. INTRODUCTION

1. This informal discussion paper contains ideas for the improvement of the Executive Committee (ExCom) Conclusions process, bearing in mind issues and concerns which have been the subject of previous Informal Consultative Meetings. The paper also addresses some suggestions raised in the “Review of the Use of UNHCR Executive Committee Conclusions on International Protection”.

II. THEMES FOR EXCOM CONCLUSIONS

A. Selection of themes

2. Concerning the methodology used by UNHCR to identify possible themes for ExCom Conclusions, Member States have expressed their desire to understand how, within UNHCR, protection issues are selected and proposed to the Committee as themes for Conclusions. Now that the themes in the Agenda for Protection (AfP) have been largely exhausted, ExCom Member States believe that it is timely to establish a predictable methodology for such a selection process. They have expressed the desire for UNHCR, in the process of identifying themes for ExCom Conclusions, to better explain existing “gaps” to be addressed by the protection themes proposed, and for States to be given more lead time to discuss the themes proposed before deciding on a particular theme for a possible Conclusion.

3. UNHCR appreciates the need for the theme identification process to be enhanced. In particular, it agrees with, and has signaled, various ideas for the way in which the process can be made more predictable. This includes continuing to work with the ExCom Bureau and other stakeholders to provide the clearest possible explanation to Member States on the reasons for any particular theme proposed.

4. At the same time, it is important that the ExCom theme identification process does not become an end in itself, or so burdensome as to undermine the substantive work of negotiating and elaborating the Conclusions themselves. In view of its work with persons of concern worldwide and its knowledge of global protection issues, UNHCR is in a position to identify key protection issues on which ExCom is requested to provide guidance or develop norms and standards through Conclusions. It is important that this right of initiative of the High Commissioner to ask ExCom for advice on protection issues through Conclusions be preserved.

5. The interest of Member States in having papers on themes which explain the reasons why an issue is brought up before ExCom, including the gaps to be addressed, is understood. This is

in fact what UNHCR strives to do through the thematic papers. Efforts in this respect can be enhanced. However, as cautioned already, preliminary justifications as to why a theme has been chosen, and the processes that have gone into that choice, should be balanced with the need to focus attention on discussing the issue or theme itself, and the related substantive issues of protection.

6. UNHCR has taken several steps to enhance its in-house process for identifying protection themes and issues which are in need of ExCom guidance, and will continue to do so. Some of these steps include consultations with the Field Reference Group on Protection Policies which are proving to be important, particularly in enhancing the input and perspectives of the Field, over and beyond Protection Reports, operational review findings, and other sources which are already drawn upon. There are also already much wider in-house discussions at Headquarters on particular themes, processes which in themselves serve to raise awareness on ExCom Conclusions. All these efforts will continue to be fostered and improved.

B. Multi-year listing of themes

7. There appears to be strong support by ExCom Member States for a multi-year listing of possible Conclusion themes. This approach would allow ample lead time for discussing proposed themes and would also enable greater “buy-in” from States. UNHCR has already agreed to develop a multi-year menu of possible thematic Conclusions which could be taken up over a period of the next three to four years. For this purpose, it has been agreed that 2008 will effectively be a transition year as far as promoting thematic Conclusions is concerned. Meanwhile, following discussions with Member States, the draft General Conclusion for this year will outline suggested themes for the next three to four years. UNHCR has already provided the necessary information and clarifications on some of these themes and will affirm this in the draft General Conclusion.¹

C. Linkages with themes discussed in other fora

8. Suggestions have been made by ExCom Member States that there should be better linkages of the themes to broader policy priorities of UNHCR, such as those taken up in other fora, including the High Commissioner’s Dialogue on International Protection. UNHCR appreciates the logic of this suggestion. It should, however, also be recognized that there may not necessarily be a coincidence between issues which the Office considers call for broad dialogue, and those for which policy, normative or operational guidance from ExCom through Conclusions is called for. Protection themes for Conclusions are intended to fill protection “gaps” and provide normative guidance, which may not be the case in respect of broader policy issues taken up in other fora.

D. Type of Conclusions

9. There has been an extended debate as to the type of issues which should be brought before the Executive Committee for consideration as Conclusions, and whether these should be normative or operational in nature. The views on this are indeed divergent on the part of ExCom Member States themselves. While some States believe that Conclusions should be “operational” in nature, others are of the view that Conclusions should be normative in character, having a

¹ At the informal consultative meeting at which this paper will be discussed, UNHCR will review and further elaborate on these themes.

standard-setting function. These States believe that “operational” guidance should be elaborated in UNHCR’s own guidelines, handbooks and similar tools.

10. UNHCR believes that, as the negotiation of ExCom Conclusions is principally a State process and the Conclusions are reached by way of consensus, there is definitive value in Conclusions which are of a normative or policy character, providing guidance in areas of norms, policy and law, where there are gaps, emerging issues or the need to reiterate and further develop existing vistas. On the other hand, there will also be critical operational areas in need of ExCom guidance. Moreover, certain issues will simultaneously feature aspects that are both normative and operational in nature, since good practices could be set down as prescriptive standards for conducting activities worldwide. It is thus difficult to draw sharp distinctions. It is thus proposed that, as far as possible, priority should be given to matters that are of a normative or standard-setting nature that address practical operational realities. It can also be accepted that, normally operational guidelines and standards can indeed be developed by UNHCR in its guidelines, handbooks and other documents of that nature. Thus, ExCom would retain flexibility in the nature of the Conclusions it should be ready to consider, and relevant themes of an operational nature could also be appropriate as the subject of Conclusions.

III. THE EXCOM CONCLUSIONS NEGOTIATIONS PROCESS

A. More time to have informal consultative meetings prior to the start of negotiations

11. Overall, ExCom Member States have expressed the desire to have more time to debate and discuss protection themes. Until two years ago, the negotiations process started almost immediately after the June Standing Committee meeting at which the conference room papers examining the substantive issues of the themes were tabled. As it was felt that there was too little time given to Member States to understand and explore the issues with their capitals, it was suggested that conference room papers on the themes be submitted at the March Standing Committee, and that informal consultative meetings on the themes be held over the following months, prior to the start of the formal negotiations process. On this basis, the practice of submitting conference room papers to the March Standing Committee, and starting negotiations even before the June Standing Committee, was adopted two years ago. It is now felt that this practice should continue with ample time given to informal consultative meetings before the start of negotiations of the texts.

12. It is acknowledged that a multi-year thematic work plan of Conclusions would also enable a greater lead time since discussions on future themes could be started well in advance. Needless to say, the benefits of this approach will need to be balanced carefully with negotiations that should not become overly extended.

B. Informal setting of consultations

13. It is agreed that the informal atmosphere of consultations is an added benefit as it serves to enable an easier airing of views which can then feed into the crafting of the first draft texts. UNHCR believes it important to reinforce such informal settings through ensuring an appropriate venue as well as allowing ample time for the discussions. Indeed, States themselves could explore the establishment of independent mechanisms to allow for further informal discussions. In addition, external “experts”, such as academics, could be a useful resource in the discussions to provide different perspectives and facilitate a better understanding of the issues at

stake. Efforts should thus be made to bring in external experts as resource persons in informal consultative meetings, prior to the text negotiation process.

C. Nature of the negotiations process

14. The drafting process should not be simply a linguistic exercise. It should be a forum to achieve a better understanding of differing perspectives and interests, while moving towards consensus on issues at stake. UNHCR and the Rapporteur should thus steer the discussions in a way which would enrich conceptual understanding and reinforce protection standards.

D. Attendance/participation by States

15. Irregular attendance/participation by some States has been a limiting factor for the negotiations process in recent times. In order to ensure an efficient and effective process, it is therefore most important that all Member States commit themselves to attending and participating to the full in the Conclusions drafting process.

IV. INITIAL/DRAFT TEXTS OF CONCLUSIONS

A. Quality and length of initial drafts

16. UNHCR will ensure high quality of first drafts, including clear and crisp texts. However, while UNHCR will strive for short texts, there may be themes which raise issues requiring more complex advice and length should be determined by need. Under these important considerations, UNHCR nevertheless agrees that it would in all cases strive to elaborate texts which are as cogent and succinct as possible.

B. Standards not to be diminished

17. It is critical that the final outcomes of the Conclusions do not fall below standards set, in particular treaty standards. It would therefore be important to avoid, to the extent possible, issues and texts which have already been covered, thus reopening these for renegotiation and risking a cut-back in standards. At the same time, States themselves will have to accept that a certain threshold of standards will never be crossed. The understandable need to project national priority or interests should not be allowed to compromise globally established standards.

C. Explanation of texts

18. In order to assist ExCom Member States understand the framing of texts, UNHCR would provide in the initial texts tabled, explanation for texts and issues put forward.

V. ROLE OF UNHCR

19. UNHCR's role in the ExCom Conclusions negotiation process is not merely that of an administrative or "secretariat" nature. While the Office does provide administrative and secretariat support to ExCom, including in the Conclusions drafting process, UNHCR's role in the Conclusions drafting process is substantive in character, given the organization's mandate for refugees, and therefore its direct interest in the guidance provided in the Conclusions. UNHCR thus has a major stake in the Conclusions being negotiated.

20. The Division of International Protection Services (DIPS), being the functional unit in the organization with special expertise in refugee law and protection policy, plays a dual function: firstly, to represent UNHCR in the Conclusions drafting process as a party to the negotiations, and secondly, to provide its legal and operational expertise to facilitate the discussions.

VI. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

21. It is agreed that non-governmental organizations (NGOs) have a crucial role to play in the crafting of Conclusions given their operational knowledge and grassroots engagement which enable them to bring perspectives close to realities on the ground.

VII. DISSEMINATION OF EXCOM CONCLUSIONS

22. In view of the extended discussions that have taken place on the value of ExCom Conclusions, a review has been undertaken, the outcome of which is being shared separately. After adoption, Conclusions have systematically been distributed extensively to senior UNHCR staff, accompanied by an analysis of the contents of the Conclusion and the background problematic that necessitated its negotiation. Other channels used to distribute Conclusions have been UNHCR websites, including the websites of country offices in the languages used in those countries, and to governments, NGOs and other stakeholders. Subsequent to dissemination, the Conclusions have been used by UNHCR offices in their mandated or advocacy work. Governments and NGOs have similarly used Conclusions. However, it is recognized that periodic surveys of use and other forms of systematized follow-up or evaluation will strengthen their use and enable continuous monitoring of their relevance.

VIII. FOLLOW-UP STEPS

23. It is proposed to distribute this informal discussion paper to ExCom members accompanied by the report of the “Review of the Use of UNHCR Executive Committee Conclusions on International Protection” prepared by the Evaluation Team led by Mr. Bryan Deschamp (Consultant). It is expected that these discussions will result in a number of follow-up steps in the interest of an overall improvement of the ExCom Conclusions process as a whole.

UNHCR
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